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No. 93 —— -

SUPREME COURT, U.S.
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IN THE
Supreme Court of the United States
OCTOBER TERM, 1993

SECURITY SERVICES, INC. f/k/a
RISS INTERNATIONAL CORPORATION,
Petitioner,

v.

GARVEY CORPORATION

and

INDIA TEXIMPOR, INC.,
Respondents.

Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

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PETITION FOR WRIT OF CERTIORARI

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October 29, 1993

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QUESTION PRESENTED FOR REVIEW

In an action by a motor common carrier to collect its tariff charges may the Interstate Commerce Commission (hereinafter "ICC") declare the carrier's filed distance rate tariff retroactively void solely because the carrier failed to comply with ICC regulations for the determination of distances?

LIST OF PARTIES

Petitioner, Security Services, Inc. f/k/a Riss International Corporation (hereinafter "Security") is a Delaware corporation previously engaged in common carrier transportation of freight in interstate commerce. Respondent, Garvey Corporation (hereinafter "Garvey"), is a New Jersey corporation engaged in the design and manufacture of conveyors. Respondent, India Teximpor, Inc. (hereinafter "Teximpor"), is a New Jersey corporation engaged in garment import.

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* There are no parent or subsidiary companies to be listed for the corporations named in this list of parties.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Third Circuit and the denial of the petition for rehearing are unreported and reprinted at Appendices D and C. The order and decision of the United States District Court for the District of New Jersey (Debevoise, J.) granting summary judgment for Teximpor, is unreported and is reprinted at Appendix A, and the order of the United States District Court for the District of New Jersey (Simandle, J.) granting summary judgment for Garvey is unreported and is reprinted at Appendix B.

JURISDICTIONAL BASIS

The judgment of the United States Court of Appeals for the Third Circuit was dated, filed and entered on June 14, 1993. Security's petition for rehearing was denied on August 2, 1993. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1). The petition herein was timely filed pursuant to 28 U.S.C. § 2101(c). Security, pursuant to Supreme Court Rule 12.2, has filed this petition for two separate cases together because they contain the identical issue from the same circuit.

STATUTES INVOLVED

49 U.S.C. § 10761. Transportation prohibited without tariff.

> Except as provided in this subtitle, a carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under chapter 105 of this title shall provide that transportation or service only if the rate for the transportation or service is contained in a tariff that is in effect under this subchapter. That carrier may not charge or receive a different compensation for that transportation or service than the rate specified in the tariff.

49 U.S.C. § 10762. General tariff requirements.

* * * *

> (e) The Commission may reject a tariff submitted to it by a common carrier under this section if that tariff violates this section or regulation of the Commission carrying out this section.

STATEMENT OF THE CASE

Petitioner Security Services, Inc. (hereinafter "Security") was a motor common carrier operating pursuant to a certificate of public convenience and necessity issued by the Interstate Commerce Commission (hereinafter "ICC" or "Commission"). Security operated under Title

49 of the United States Code which governs transportation in interstate commerce.

Pursuant to 49 U.S.C. § 10762(a) Security published a tariff containing rates, *inter alia,* stated in cents per mile and filed with the ICC. The filed tariff specified that a distance guide published by Household Goods Carriers Tariff Bureau and filed with the ICC was to be utilized for a determination of distances. Security failed to follow ICC regulations set forth at 49 C.F.R. § 1312.4(d) requiring it to provide the publisher of the distance guide with a current power of attorney at the time of the shipments at issue in these two cases. Security brought separate civil actions against Garvey Corporation ("Garvey"), No. 91-04789, and India Teximpor, Inc. ("Teximpor"), No. 92-01042, in the United States District Court for the District of New Jersey, to collect freight charges based upon this filed tariff.

On September 29, 1992, the United States District Court for the District of New Jersey entered summary judgment in favor of Teximpor against Security. On October 23, 1992, the United States District Court for the District of New Jersey entered summary judgment in favor of Garvey and against Security. A timely appeal was filed by Security in each case at the United States Court of Appeals for the Third Circuit. The cases were consolidated by the Third Circuit on April 16, 1993. On June 23, 1993 the Third Circuit Court of Appeals affirmed the district court findings for both cases and cited *Security Services, Inc. v. K-Mart Corp.*, No. 92-1833 (3d Cir. June 18, 1993), decided five days earlier, as the compelling Circuit precedent for the affirmance. On July 7, 1993, Security filed a timely petition for rehearing. On August 2, 1993, the petition for rehearing was denied.

REASONS FOR GRANTING THE WRIT

THIS COURT'S GRANT OF CERTIORARI IN *K-MART*, THE DECISION RELIED ON HEREIN, REQUIRES THAT THIS PETITION BE GRANTED.

On October 18, 1993, this Court granted the petition for writ of certiorari of Security in *Security Services, Inc. v. K-Mart Corp.*, 996 F.2d 1516 (3d Cir. 1993), *cert. granted*, 62 U.S.L.W. 3287 (Oct. 18, 1993). As previously stated, the Third Circuit Court of Appeals opinion in this matter affirmed the district court decisions and advised the parties to see the Circuit's recent *K-Mart* decision. Security requests that this Court grant its petition, as the decision in *K-Mart* will be controlling precedent. Additionally, Security requests that this Court hold the briefing schedule in abeyance pending this Court's *K-Mart* decision and upon issuance of said opinion remand to the Third Circuit for findings consistent with that decision.

CONCLUSION

For the foregoing reasons, the Petition of Security should be granted and a Writ of Certiorari issued to the United States Court of Appeals for the Third Circuit.

Respectfully submitted,

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